



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 04-70
April 26, 2012

NFS 1852, AWARD FEE FOR SERVICE AND END-ITEM CONTRACTS

BACKGROUND: This Procurement Notice (PN) revises the NASA FAR Supplement (NFS) to reflect the final rule published on March 27, 2012 in the Federal Register. This final rule updated the Award Fee for Service Contracts clause (NFS 1852.216-76) to clarify that the amount of award fee held in reserve, if any, shall not exceed \$100,000 for the contract, and (2) added similar language to the Award Fee for End-Item Contracts clause (NFS 1852.216-77) to allow the contracting officer to withhold fee payments, at a not-to-exceed amount of \$100,000 for the contract, in reserve to protect the Government's interests relative to an orderly and timely closeout of the contract.

ACQUISITIONS AFFECTED BY CHANGES: All award fee incentive contracts awarded and final solicitations issued after the effective date (April 26, 2012) of the NFS final rule dated March 27, 2012.

ACTION REQUIRED BY CONTRACTING OFFICERS: Contracting officers shall use the enclosed revised NFS clauses relative to award fee in all contracts awarded and final solicitations issued after the effective date of the NFS final rule dated March 27, 2012.

PROVISION AND CLAUSE CHANGES: 1852.216-76 and 1852.216-77

PARTS AFFECTED: Part 1852.

REPLACEMENT PAGES: You may use the enclosed pages to replace 52:23, 52:24, 52:25 and 52:26 of the NFS.

TYPE OF RULE AND PUBLICATION DATE: The PN was published as a final rule in the Federal Register (Vol. 77, No. 59 FR 18106) on March 27, 2012.

HEADQUARTERS CONTACT: Bill Roets, Office of Procurement, Contract Management Division, (202) 358-4483, email: william.roets-1@nasa.gov.

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Director, Contract Management Division

Enclosures

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PN LIST

interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, whose name, address, telephone number, facsimile number, and e-mail address may be found at: http://prod.nais.nasa.gov/pub/pub_library/Omb.html. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the Agency ombudsman identified at the above URL. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End of clause)

ALTERNATE I

(JUNE 2000)

As prescribed in 1815.7003, insert the following paragraph (c):

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

(End of clause)

1852.216-73 Estimated Cost and Cost Sharing.

As prescribed in 1816.307-70(a), insert the following clause:

ESTIMATED COST AND COST SHARING

(DECEMBER 1991)

(a) It is estimated that the total cost of performing the work under this contract will be \$ ____.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than ____ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining ____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the _____ [insert "Limitation of Cost" or "Limitation of Funds"] clause, the total estimated cost to the Government is hereby established as \$ ____ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

1852.216-74 Estimated Cost and Fixed Fee.

As prescribed in 1816.307-70(b), insert the following clause:

ESTIMATED COST AND FIXED FEE

(DECEMBER 1991)

The estimated cost of this contract is ____ exclusive of the fixed fee of ____ . The total estimated cost and fixed fee is ____ .

(End of clause)

1852.216-75 Payment of Fixed Fee.

As prescribed in 1816.307-70(c), insert the following clause:

**PAYMENT OF FIXED FEE
(DECEMBER 1988)**

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

1852.216-76 Award Fee for Service Contracts.

As prescribed in 1816.406-70(a), insert the following clause:

**AWARD FEE FOR SERVICE CONTRACTS
(APRIL 2012)**

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract.

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with [identify performance evaluation plan]. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The [insert payment office] will make payment based on [Insert method of authorizing award fee payment, e.g., issuance of unilateral modification by contracting officer].

(d) The Contracting Officer may direct the withholding of **earned award fee** payments until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest **relative to an orderly and timely closeout of the contract**. This reserve shall not exceed 15 percent of the **contract's** total potential award fee **or \$100,000, whichever is less**.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at [identify location of award fee amounts]. Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f)(1) Provisional award fee payments [insert "will" or "will not", as applicable] be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly)] basis. The total amount of award fee available in an evaluation period that will be provisionally paid is the lesser of [Insert a percent not to exceed 80 percent] or the prior period's evaluation score.

(2) Provisional award fee payments will be superseded by the final award fee evaluation for that period. If provisional payments exceed the final evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) If the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate.

(4) Provisional award fee payments [insert "will" or "will not", as appropriate] be made prior to the first award fee determination by the Government.

(g) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

* [A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405-272(a).]

(End of clause)

1852.216-77 Award Fee for End Item Contracts.

As prescribed in 1816.406-70(b), insert the following clause:

AWARD FEE FOR END ITEM CONTRACTS

(APRIL 2012)

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract. All award fee evaluations, with the exception of the last evaluation, will be interim evaluations. At the last evaluation, which is final, the Contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the Contractor if the final award fee evaluation is "poor/unsatisfactory."

(b) Beginning 6* months after the effective date of this contract, the Government will evaluate the Contractor's interim performance every 6* months to monitor Contractor performance prior to contract completion and to provide feedback to the Contractor. The evaluation will be performed in accordance with [identify performance evaluation plan] to this contract. The Contractor may submit a self-evaluation of performance for each period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government will advise the Contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Base fee, if applicable, will be paid in [Insert "monthly", or less frequent period] installments based on the percent of completion of the work as determined by the Contracting Officer.

(2) Interim award fee payments will be made to the Contractor based on each interim evaluation. The amount of the interim award fee payment is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that period *less* any provisional payments made during the period. All interim award fee payments will be superseded by the final award fee determination.

(3) Provisional award fee payments will [insert "not" if applicable] be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly)] basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [Insert a percent not to exceed 80 percent] of the prior interim evaluation score (see [insert applicable cite]). Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently substantially exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is "poor/unsatisfactory," the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a copy to the Deputy Chief Financial Officer (Finance).

(4) All interim (and provisional, if applicable) fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the Contractor, or the Contractor will refund to the Government the difference between the final

award fee determination and the cumulative interim (and provisional, if applicable) fee payments. If the final award fee evaluation is "poor/unsatisfactory", any base fee paid will be refunded to the Government.

(5) Payment of base fee, if applicable, will be made based on submission of an invoice by the Contractor. Payment of award fee will be made by the [insert payment office] based on [Insert method of making award fee payment, e.g., issuance of a unilateral modification by the Contracting Officer].

(d) The Contracting Officer may direct the withholding of interim award fee payments until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest relative to an orderly and timely closeout of the contract. This reserve shall not exceed 15 percent of the contracts total potential award fee or \$100,000, whichever is less.

(e) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

* [A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405-272(a).]

(End of clause)

1852.216-78 Firm Fixed Price.

As prescribed in 1816.202-70, insert the following clause:

**FIRM FIXED PRICE
(DECEMBER 1988)**

The total firm fixed price of this contract is \$[Insert the appropriate amount].

(End of clause)

1852.216-80 Task Ordering Procedure.

As prescribed in 1816.506-70, insert the following clause:

**TASK ORDERING PROCEDURE
(OCTOBER 1996)**